

LEWIS BRISBOIS BISGAARD & SMITH LLP

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Attorneys for Defendant
AMCO INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE DOUGHERTY,

Plaintiff,

v.

AMCO INSURANCE COMPANY, and DOES
ONE through TWENTY, Inclusive,

Defendant.

) CASE NO. C 07-01140 MHP
)
) **DECLARATION OF STEPHEN J.**
) **LIBERATORE IN SUPPORT OF**
) **DEFENDANT AMCO INSURANCE**
) **COMPANY'S OPPOSITION TO**
) **PLAINTIFF'S EX PARTE REQUEST TO**
) **CONTINUE HEARING DATE RE:**
) **AMCO'S MOTION FOR SUMMARY**
) **JUDGMENT, OR IN THE ALTERNATIVE,**
) **PARTIAL SUMMARY JUDGMENT**

I, Stephen J. Liberatore, declare:

1. I am an attorney at law, duly licensed to practice before the United States District Court, Northern District of California, and as partner in the law firm of Lewis Brisbois Bisgaard & Smith LLP, am one of the attorneys of record for Defendant AMCO Insurance Company ("AMCO") in the above-captioned matter. I make this declaration in support of AMCO's Opposition to Plaintiff's Ex Parte Request to Continue Hearing on Motion for Summary Judgment.

2. The facts that are summarized in section B of the accompanying memorandum of points and authorities (see Opp'n Brief, at 2:22-3:19) are set forth in AMCO's motion for summary judgment, with supporting declarations and exhibits. For the sake of brevity, the supporting declarations and exhibits are not re-presented to the Court here. Also, the dates referred to in the memorandum of points and authorities regarding when the parties' initial disclosures were due were

1 part of Judge Brazil's original scheduling order and, I presume, that order is in the Court's file.

2 3. I was out-of-state on Monday, June 25 and Tuesday, June 26. My voice-mail greeting
3 indicated that I would check my voice-mail messages and return calls as my schedule allowed. I
4 returned Mr. Porter's voice-mail message on Wednesday morning, June 27, upon my return to the
5 office. He was not available when I called, and so I left him a message, which he returned shortly
6 thereafter. We discussed his request that AMCO stipulate to a continuance of the hearing on its
7 motion for summary judgment so that he could conduct certain depositions, and he identified the three
8 persons he wished to depose. When I asked what information he hoped to obtain via the depositions
9 that he did not already have, he stated he wanted to learn "why AMCO made no effort to settle"
10 Plaintiff's underinsured motorist claim. Attached hereto and marked **Exhibit A** is a true and correct
11 copy of the letter I wrote to Mr. Porter after our telephone conversation.

12 4. As noted in the accompanying memorandum of points and authorities, Plaintiff has not
13 yet made the required Federal Rules of Civil Procedure, Rule 26 initial disclosures, which were due
14 to be made, per Judge Brazil earlier scheduling order, on May 29, 2007. Mr. Porter had advised in
15 the days before the due date that he did not think he would be able to meet the deadline but that he
16 would be able to make the disclosures by the end of that week, which ended on Friday, June 1, 2007.
17 With the understanding that Mr. Porter needed a few extra days to prepare and make Plaintiff's initial
18 disclosures, I agreed that such timeline would be acceptable. Mr. Porter did not abide by his own
19 representation regarding when Plaintiff's initial disclosures would be made.

20 5. AMCO filed its motion for summary judgment when it did because it does not believe
21 that the pertinent facts are in dispute and that this case can be resolved without the need for expensive
22 and time-consuming discovery. The underlying facts are, or should be, well-known to Plaintiff and
23 her counsel given their intimate involvement with those facts for at least the last five years.

24 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
25 was executed this 29th day of June, 2007, at San Francisco, California.

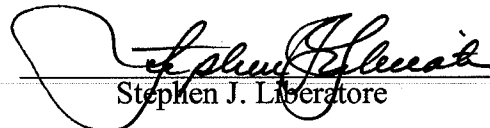
26
27 
28 Stephen J. Liberatore

EXHIBIT “A”

LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

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June 27, 2007

FILE NO.
26198-131

Via Facsimile Transmission to (415) 391-9515

David M. Porter, Esq.
Law Offices of David M. Porter
101 California Street, Suite 2050
San Francisco, CA 94111

Re: *Christine Dougherty v. AMCO Insurance Company*
U.S. District Court, Northern District of California Case No. C 07 1140 MHP
(removed from San Francisco County Superior Court, Case No. C04-433301)

Dear Mr. Porter:

This letter confirms our telephone conversation this date.

You had left me a telephone voice-mail message requesting that AMCO stipulate to a continuance of the hearing on its pending motion for summary judgment to allow Plaintiff to conduct discovery. In our discussion, I asked what information you believe you need to obtain in discovery (via interrogatories, requests for production of documents, and/or deposition) in order to oppose the motion.

You indicated that you want to depose Jeff Mangone (the claim adjuster who handled Ms. Dougherty's underinsured motorist claim), his supervisor, and AMCO attorney Renton Rolph. Though you indicated that you did not wish to debate the motion or the facts of the case, you stated your general thought that AMCO's motion is premature. You stated that you want to find out why, as you put it, AMCO made no effort to settle the case. You expressed your view that the *Rappaport-Scott* case does not stand for the principle for which AMCO cited it in its motion. You also advised that Judge Patel's clerk had indicated to you that AMCO's motion for summary judgment may violate her standing order. Also, you stated that you believe Rule 56 entitles Plaintiff to the requested continuance.

While I appreciate your outlining the discovery you want to undertake, I am still uncertain what relevance that discovery has to Plaintiff's opposition to AMCO's motion for summary judgment. Simply put, this case presents a difference of opinion regarding the value of Plaintiff's

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312.345.1718	337.326.5777	702.893.3383	213.250.1800	212.232.1300	714.545.9200	602.385.1040	916.564.5400	909.387.1130	619.233.1006	520.202.2565

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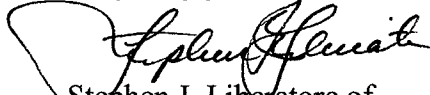
David M. Porter, Esq.
June 27, 2007
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claim against Mr. Osmidoff; as stated in Mr. Mangone's numerous communications with Mr. Murphy, AMCO believed that Plaintiff had been adequately compensated for her injuries by the monies she had already received, and invited Plaintiff to submit additional information. No additional information was forthcoming. All of this is memorialized in the claim file materials that were previously produced to Plaintiff.

I do not wish to put Plaintiff (and you) to the task of motion practice if we can agree that it is not necessary, and so I invite you to provide further explanation regarding how the discovery you wish to conduct is relevant to the issues presented by AMCO's motion. Please feel free to contact me at your convenience to discuss this issue further.

I look forward to hearing from you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Stephen J. Liberatore", is written over a circular stamp or seal.

Stephen J. Liberatore of
LEWIS BRISBOIS BISGAARD & SMITH LLP

SJL:ask

cc: Stephen M. Murphy, Esq. (via fax: (415) 986-1231)